

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1513 of 2016**

Gul Hasan Miyan, Son of Late Sahban Miyan, Resident of Village Siswan,
P.S. Nautan, Dr. Jagdishpur Kothi, District Siwan.

... .. Petitioner/s

Versus

1. Aas Mohammad, Son of Late Sahban Miyan
2. Daroga Miyan, Son of Late Hadis Miyan
Both are residents of village Siswan, P.S. Nautan Dr. Jagdishpur Kothi,
District Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Pandey, Advocate
For the Respondent/s : Mr. Ajay Mishra, Advocate
Mr. Babloo Kumar Jha, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 29-08-2024

Heard learned counsel for the petitioner and learned counsel for the respondents and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 08.09.2016 passed in Title Suit No. 64 of 2014 by learned Munsif-II, Siwan whereby and whereunder the learned trial court rejected the petition dated 04.08.2016 filed by the plaintiff/petitioner under Order 6 Rule 17 of the Civil Procedure Code (hereinafter referred to as the 'Code')

3. The learned counsel for the petitioner submits that the petitioner is plaintiff before the learned trial court and the



respondents are the defendants. The plaintiff has filed a suit for declaration of title over the suit land as mentioned in the schedule of the plaint. The matter was at the stage of plaintiff's evidence and examination-in-chief of the plaintiff was filed and at that time, a petition for amendment under Order 6 Rule 17 of the Code has been filed on behalf of the plaintiff making a prayer for amendment in paragraph 1, 8, 13 and in the relief portion of the plaint. The learned counsel further submits that through these amendments, two sale deeds bearing nos.12929 and 12930, both dated 09.08.1982 executed by defendant no.1 in favour of defendant no.2 have been sought to be declared null and void. The learned counsel further submits that proper foundation has already been laid in the plaint in paragraph 9. The learned counsel further submits that the plaintiff came to know about the execution of the sale deeds in the year 2014 and mentioned this fact in plaint, but due to inadvertence and poor drafting, the same could not be mentioned in relief portion and, thereafter, the amendment petition has been filed on 04.08.2016. The learned counsel further submits that in order to avoid multiplicity of the litigation and for determination of the real controversy between the parties, the amendments are necessary. The learned trial court has wrongly observed that the amendment could change the nature of suit and there has been much delay in filing the petition for amendment.



The learned counsel further submits that the evidence of the plaintiff has just started and only examination-in-chief of the plaintiff was filed. So the suit is still at the initial stage. The learned counsel further submits that the amendments are necessary for deciding the real controversy between the parties and the learned trial court erred while rejecting the petition filed by the plaintiff and the impugned order be set aside and the petition of the plaintiff be allowed.

4. On the other hand, learned counsel for the respondents vehemently opposes the submission made on behalf of the petitioner. The learned counsel further submits that there is no infirmity in the impugned order. The petitioner/plaintiff wants to introduce time barred claim and has been seeking amendment in this regard. The sale deeds were executed in the year 1982 and under Article 59 of the Limitation Act, the limitation period is only 3 years for seeking declaration against the sale deed. However, after more than 20 years, the plaintiff/petitioner wants to challenge the execution of the sale deeds and the same is time barred. The learned counsel further submits that there is no merit in the submission that the plaintiff was not having any knowledge since the plaintiff and the defendants are own brothers and the vendees of the defendants have already come in possession after the execution of the sale deeds and the plaintiff has all along been



knowing about this fact, still he chose not to assail the sale deeds and has filed the application for amendment quite late and the same could not be allowed. The learned counsel further submits that the plaintiff/petitioner has failed to show due diligence since the trial has started and after commencement of trial, the plaintiff was duty bound to explain why the amendments were not sought at the first instance. Thus, the learned counsel submits that the instant petition has got no merit and the same may be dismissed.

5. I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case.

6. Order VI Rule 17 of the Code reads as under :

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”.

7. Evidently, the amendments have been sought to be



introduced after framing of issues and at the stage of the evidence of the plaintiff. The provision is quite specific that amendment shall not be allowed after commencement of the trial.

8. Now, commencement of trial has different connotation in the facts and circumstances of each case. The Hon'ble Supreme Court in the case of *Baldev Singh & Ors. vs. Manohar Singh & Anr.* reported in (2006) 6 SCC 498 has held that the commencement of trial as used in proviso to Order VI Rule 17 of the Code must be understood in limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and adducing of arguments. Admittedly, the present case is at the stage of evidence of plaintiff. However, amendments could be allowed even after commencement of trial under certain conditions.

9. The law has been settled by various decisions of the Hon'ble Supreme Court and recently in the case of *Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd.*, reported in 2022 SCC OnLine SC 1128, the Hon'ble Supreme Court summarized the law on the point of amendment in paragraph 70 in the following manner :

“70. Our final conclusions may be summed up thus:



(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally



required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.



(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed. (xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del



1897)”.
10. As a general rule, all amendments ought to be

allowed which are necessary for determination of real controversy between the parties. The Hon’ble Supreme Court in the case of *L.J. Leach and Co. Ltd. vs. Jardine Skinner and Co.* reported in *AIR 1957 SC 357* has held that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice. On the same line is the decision of a three Judge Bench of the Hon’ble Supreme Court in the case of *T.N. Alloy Foundry Co. Ltd. vs. T.N. Electricity Board* reported in *(2004) 3 SCC 392* wherein it has been held that an application for amendment of the pleadings should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.

11. The Hon’ble Supreme Court in the case of *Pankaja and Anr. vs. Yellappa (dead) by Lrs. And Ors.* reported



in **(2004) 6 SCC 415** held as follows :

“14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

16. This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board [(2004) 3 SCC 392] . Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice”.

12. Coming back to the facts of the case, the plaintiff claims that he was not having knowledge and, therefore, the



amendment petition has been filed within time after the plaintiff came to know about the fact in the year 2014. On the other hand, the defendants claim that the plaintiff was all along having the knowledge of the sale deeds since 1994. If the contention of the plaintiff is taken to be true, the amendment has been sought within limitation period. In these circumstances, the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for and I place my reliance on the decision of the Hon'ble Supreme Court in the case of *Ragu Thilak D. John vs. S. Rayappan* reported in *(2001) 2 SCC 472*.

13. As the plaintiff/petitioner has raised a disputed question on the point of limitation, the same could be considered by the learned trial court after framing proper issue with regard to limitation. On this ground, the amendment sought could not be declined.

14. So far as due diligence aspect is concerned, it is true that the trial has commenced and the plaintiff was duty bound to show that he could not have brought the amendment earlier, but still it is a fact that the plaintiff has mentioned about the execution of sale deeds in paragraph 9 of his plaint. It is consequential relief which is being sought and hence, it could



not be said that the said relief could not be incorporated in the relief portion by way of amendment as the same appears to be necessary for determination of real controversy between the parties. This takes care of objection regarding lack of due diligence on part of the plaintiff.

15. Moreover, from the facts of the case, it is apparent that the amendments have been sought at the stage of evidence of plaintiff, but it is the suit of plaintiff and if any delay is caused, ultimately the plaintiff would be sufferer. It could not be said that allowing the amendment at this stage would cause injustice to the other side since it is still at the stage of start of plaintiff's evidence.

16. Further, from bare perusal of the amendment application, I do not find allowing the amendment would change the nature of suit. The suit has been filed for declaration of title and if the sale deeds are executed in respect of the suit land, without setting aside the sale deeds, there could not be a final determination of title. Hence, the finding of the learned trial court regarding change in the nature of the suit, in my view, is misconceived. If the amendment is not allowed, it will lead to unnecessary multiplicity of litigation. The amendments also appear to be necessary for the purpose of determination of real controversy between the parties.

Para 18 of the *Pankaja* (supra) is quite apposite :



“18. We think that the course adopted by this Court in Ragu Thilak D. John case applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief”.

17. In the light of aforesaid discussion, I am of the considered opinion that the learned trial court committed an error of jurisdiction when it refused to allow the amendment petition and rejected the same. Hence, I do not find the order dated 08.09.2016 to be sustainable in the eyes of law and, accordingly, the same is set aside. Consequently, the application dated 04.08.2016 filed before the learned trial court is allowed.

18. However, the contesting respondent will be given ample opportunity to rebut/controvert the claim of the



plaintiff/petitioner sought to be brought through amendment by way of filing amended written statement/additional written statement and the learned trial court would frame necessary issue regarding limitation.

19. As a result, the instant petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

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